

RECEIPT # 62879  
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 BY DPTY. CLK. (M)  
 DATE 2-18-05

UNITED STATES DISTRICT COURT  
 FOR THE  
 DISTRICT OF MASSACHUSETTS

FILED  
 CLERK'S OFFICE  
 U.S. DISTRICT COURT  
 DISTRICT OF MASSACHUSETTS  
 MAR 18 12 11

DOCUSERVE, INC.,

Plaintiffs,

v.

XEROX CORPORATION,

Defendant.

05 CV 10514 GAO  
 CIVIL ACTION NO. \_\_\_\_\_

MAGISTRATE JUDGE [Signature]

**XEROX CORPORATION'S NOTICE OF REMOVAL**

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS:

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Xerox Corporation ("Xerox") notifies the Court of the removal of the above-captioned cause of action from the Commonwealth of Massachusetts, Superior Court Department, Middlesex County in which it is now pending. In support of this Notice of Removal, Xerox states:

1. On or about February 17, 2005, Plaintiff filed a Complaint and Jury Demand ("Complaint") in the Commonwealth of Massachusetts, Superior Court Department, Middlesex County, captioned *DocuServe, Inc., Plaintiff, v. Xerox Corporation, Defendant*, Civil Action No. MICV2005-00528-E ("the state court action").
2. The Complaint, Summons, and Civil Action Cover Sheet were served on Xerox on February 23, 2005.

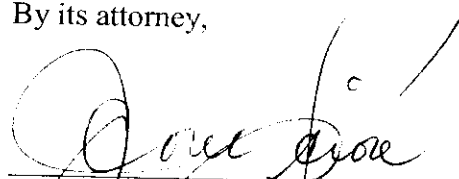
3. The Complaint, Summons, and Civil Action Cover Sheet are the only pleadings filed in the state court action.
4. This Notice of Removal is being filed within thirty (30) days after the simultaneous service of the Complaint and Summons by DocuServe, Inc. and, therefore, is timely filed pursuant to 28 U.S.C. § 1446(b).
5. In accordance with Local Rule 81.1, Xerox will file with this Court attested copies of all records, proceedings and docket entries in the state court within thirty (30) days.
6. Plaintiff DocuServe, Inc. is, on information and belief, a Massachusetts corporation with its principal place of business in Marlborough, Massachusetts.
7. Xerox is incorporated under the laws of the State of New York, with its principal place of business in Stamford, Connecticut.
8. This is a breach of contract action in which Plaintiff alleges: Violation of Express Warranty; Violation of the Implied Warranty of Merchantability; Violation of the Implied Warranty of Fitness for a Particular Purpose; Negligent Misrepresentation; Intentional Misrepresentation; Violation of Mass. Gen. Laws ch. 231, § 85J; Violation of Mass. Gen. Laws ch. 93A; and Breach of Contract—Good Faith and Fair Dealing—by Xerox. (Complaint Counts I-VIII).
9. Without admitting, and expressly denying, the validity of Plaintiff's causes of action, the amount in controversy, based upon information and belief, exceeds Seventy-Five Thousand Dollars (\$75,000), exclusive of interest and costs.
10. Pursuant to 28 U.S.C. § 1332, this Court has original jurisdiction over this action by reason of diversity of citizenship and an amount in controversy which exceeds the sum or value of Seventy-Five Thousand Dollars (\$75,000), exclusive of interest and costs.

11. This action may be removed to this Court, pursuant to 28 U.S.C. § 1441(a) which allows for the removal of any civil action brought in a state court of which the District Courts of the United States have original jurisdiction, by the defendant, to the District Court of the United States for the district and division embracing the place where such action is pending.
12. Xerox has provided notice of the removal of this action to Plaintiff and to the Commonwealth of Massachusetts, Superior Court Department, Middlesex County, by filing a "Notice of Removal" in the Commonwealth of Massachusetts, Superior Court Department, Middlesex County, and by serving copies of the same on Plaintiff pursuant to 28 U.S.C. § 1446(d).
13. By this Notice of Removal, Defendant is not waiving, and expressly reserves, its rights to contest service of process, personal jurisdiction, venue, and sufficiency of the Complaint.

Respectfully Submitted,

XEROX CORPORATION

By its attorney,



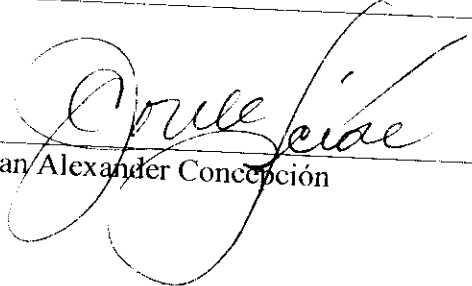
Jonathan Sablone, BBO # 632998  
Juan Alexander Concepción, BBO # 658908  
NIXON PEABODY LLP  
100 Summer Street  
Boston, MA 02110  
(617) 345-1000

Dated: March 18, 2005

**CERTIFICATE OF SERVICE**

I, Juan Alexander Concepción, hereby certify that on the 18th day of March, 2005, I caused to be served a true copy of the within *Xerox Corporation's Notice of Removal* on the following as indicated below:

BY: FIRST CLASS U.S. MAIL and FACSIMILE Ronald Davids, Esq. DAVIDS & SCHLESINGER, P.C. 40 Washington Street, Suite 250 Wellesley, Massachusetts 02481	BY: HAND Clerk of Courts Middlesex Superior Court 40 Thorndike Street Cambridge, MA 02141
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\_\_\_\_\_  
Juan Alexander Concepción

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

## I. (a) PLAINTIFFS

Docuserve, Inc.

(b) County of Residence of First Listed Plaintiff

Middlesex

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Ronald Davids, Esq., Davids & Schlesinger, P.C.  
40 Washington St., Suite 250, Wellesley, MA  
(781) 416-5055

## DEFENDANTS

County of Residence of First Listed Defendant

Rochester, NY

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Jonathan Sablone, Esq. and Juan Concepcion, Esq.  
Nixon Peabody LLP, 100 Summer St., Boston, MA  
(617) 345-1000

## II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                                       |   |                                       |                                       |
|---|---------------------------------------|---------------------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business in This State     | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5            | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding  
☒ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**Diversity 28 U.S.C. Sec. 1332**

Brief description of cause:

Breach of Contract

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMANDS

greater than 75,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DATE

3/18/05

SIGNATURE OF ATTORNEY OF RECORD

DOCKET NUMBER

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING JRP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

05 CV 10514 GAO

1. Title of case (name of first party on each side only) Docuserve, Inc. v. Xerox Corporation
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?  
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)  
YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?  
YES ☐ NO ☒
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?  
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).  
YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?  
Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?  
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)  
YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Jonathan Sablone and Juan ConcepcionADDRESS Nixon Peabody LLP, 100 Summer Street, Boston, MA 02110TELEPHONE NO. (617) 345-1000